

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE

Harvey Lemay

v.

Civil No. 11-cv-185-JD

New Hampshire Department of Safety

O R D E R

Harvey Lemay, proceeding pro se and in forma pauperis, brought a civil rights action, alleging claims that arose from the requirement that he register as a sex offender. Following initial review under 28 U.S.C. § 1915(e)(2) and review of Lemay's subsequent amendment, his amended complaint was allowed to the extent he brought claims against New Hampshire State Troopers Rocky, McDonald, and Rowe that his Fourteenth Amendment due process rights were violated by requiring him to register as a sex offender. The defendants have filed a motion for summary judgment.

Lemay moves to dismiss the motion for summary judgment on the ground that his "right to a trial by judge or jury guaranteed under the 6th Amendment of the U.S. Constitution is being compromised." He asks the court to disregard the motion for summary judgment and to allow his case to proceed to trial. Although the time has not passed for the defendants to respond to

the motion, the court addresses the motion now to avoid unnecessary delay in this case.

The Sixth Amendment pertains to criminal prosecutions. Lemay's action in this case is civil. Therefore, the Seventh Amendment is the more applicable constitutional reference.

Federal Rule of Civil Procedure 56(a) states that "[a] party may move for summary judgment, identifying each claim or defense--or the part of each claim or defense--on which summary judgment is sought." "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Id. Contrary to Lemay's argument, summary judgment does not offend the constitution, including the right to a jury trial under the Seventh Amendment. See Pease v. Rathbun-Jones Eng'g Co., 243 U.S. 272, 278 (1917); Calvi v. Knox County, 470 F.3d 422, 427 (1st Cir. 2006); Sony BMG Music Entm't v. Tenenbaum, 672 F. Supp. 2d 217, 222 (D. Mass. 2009).

Conclusion

For the foregoing reasons, the plaintiff's motion to dismiss (document no. 34) is denied.

SO ORDERED.


Joseph A. DiClerico, Jr.
United States District Judge

February 12, 2013

cc: David M. Hilts, Esquire
Harvey Lemay, pro se
Kevin H. O'Neill, Esquire